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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

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Date of decision:-08.02.2024

M/s SAARC Communication Private Ltd.

...Petitioner

Versus

The Doaba Cooperative Milk Producers Union Ltd. and others

...Respondents

CORAM : HON'BLE MR. JUSTICE SUVIR SEHGAL**Present** : Mr.Karan Bhardwaj, Advocate
for the petitioner.Mr.Arun Gosain, Advocate
for respondent No.1.Mr.Athar Ahmed, DAG, Punjab
for respondent No.3.

SUVIR SEHGAL, J.(ORAL)**CM-9398-CII-2023**

Application is allowed, as prayed for.

Written statement on behalf of respondent No.1 is taken on
record.**ARB-111-2023**

1. By way of present petition filed under Section 11 (6) of the Arbitration and Conciliation Act, 1996 (for short "the Act of 1996"), petitioner has approached this Court for appointment of an independent arbitrator.

2. Pleaded case of the petitioner is that it entered into a tripartite agreement dated 16.02.2021 with Doaba Cooperative Milk

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Producers Union Ltd. - respondent No.1 and M/s Bharat Petroleum Corporation Ltd. - respondent No.2 for conversion of Furnace Oil Fired Boilers into LPG Dual Fired Burner System (FO + LPG) and supply of packaged LPG to the Doaba Cooperative Milk Producers Union Ltd. Pursuant to work order dated 23.02.2021, Annexure P2, petitioner discharged his responsibility under the agreement and converted the Furnace Oil Fired Boilers into LPG Dual Fired Burner System and started supplying the LPG to respondent No.1. However, respondent No.1 started using coal by installing the new coal based burner and the consumption of LPG declined. As a dispute arose between the parties, petitioner tried to resolve it by approaching the General Manager by addressing communication dated 8.11.2022, Annexure P3 and sent a legal notice dated 14.12.2022, Annexure P4 calling upon the said respondent to start using the LPG and reimburse the financial loss suffered by the petitioner on account of non usage of LPG since April, 2022. Another legal notice dated 28.12.2022, Annexure P5 was served and by its reply dated 22.02.2023, Annexure P6, respondent No.1 rejected the demand of the petitioner.

3. Upon notice, petition has been contested by respondents No.1 and 3 by filing separate replies. It has been submitted that the petitioner has not invoked the arbitration clause and that, in any case, the Arbitrator, if any, has to be appointed under Section 55 (3) of the Punjab Cooperative Societies Act, 1961 (for short "the Act of 1961"). A categorical stand has been taken by respondent No.1 that an Arbitrator cannot be appointed under the Act of 1996.

4. I have considered the submissions raised by counsel for the

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parties and examined the material placed on the record.

5. At the outset, the clause which provides for arbitration deserves to be noticed and is reproduced as under:

“22 ARBITRATION: All disputes or differences arising out or, in relation to this agreement shall be firstly mutually discussed and resolved by the concerned Regional Office of M/s BPCL and by the General Manager of M/s Verka. In case the disputes and differences are not so mutually resolved but continue to subsist the same shall be referred to Registrar, Cooperative Societies, Punjab to decide the dispute himself, or transfer it for disposal to any officer not below the rank of Deputy Registrar, Cooperative Societies, Punjab for dispute resolution by the arbitrator. The provision of the Punjab Cooperative Societies Act, 1961 and rules, 1963 as amended upto date shall apply to arbitration proceedings which shall be held in the office of designated arbitrator. The award of the Sole Arbitrator shall be final, conclusive and binding on all the parties to the agreement. The Sole Arbitrator shall give reason for the award.”

6. This clause provides that disputes or differences, which arise between the parties shall be mutually resolved and in case they still subsist, they will be referred to the Registrar, Cooperative Societies, who will decide them himself or entrust them to any officer not below the rank of Deputy Registrar.

7. For the purpose of the decision of this petition, it is not

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necessary at this stage to examine whether the dispute falls within the purview of Section 55 (3) of the Act of 1961 and can be referred to the Registrar, Cooperative Societies for adjudication.

8. Case of the petitioner is that he has invoked the arbitration by serving a legal notice, Annexure P5, and the demand made in the notice is reproduced as under:

*“It is, therefore, through this legal notice, I on behalf of my client, call upon you to reimburse the financial losses suffered by my client i.e., minimum 3 lacs per month on account of non-use of LPG since April, 2022 and further call upon you to start using the LPG based plant expeditiously and in case the needful is not done my client **would invoke the arbitration proceedings as per law** within 15 days of receipt of this legal notice in that eventuality you would be held responsible for all the costs and consequences arising therefrom.” (emphasis added)*

9. A reading of the legal notice in its totality shows that the grievance of the petitioner was qua the non-usage of LPG and it had called upon the respondents to pay damages for the loss suffered on account of its non usage. A demand had also been raised upon respondent No.1 to start using the LPG based plant and, in case, it failed to do so, petitioner would invoke arbitration proceedings as per law after 15 days of the receipt of the legal notice. It is evident that the petitioner intended to invoke the arbitration clause after the service of the legal notice, Annexure P5, on the failure of respondent No.1 to start using the LPG based plant. Therefore, it cannot be said that the petitioner had

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invoked the arbitration clause through legal notice, Annexure P5.

10. Section 21 of the Act of 1996 provides that unless otherwise agreed upon by the parties, arbitral proceedings in respect of a particular dispute commences on the date on which a request for that dispute to be referred to arbitration is received by the respondent. It is therefore evident that the starting point of the arbitration is the service of the notice by the claimant on the respondent intimating his intention to seek arbitration as per the stipulation in the agreement. Notice is, therefore, a *sine qua non* and a pre-condition for initiating proceedings under Section 11(6) of the Act. If notice invoking the arbitration clause is not served upon the respondents, arbitration proceedings cannot commence.

11. The intention to invoke the arbitration clause has to be clear from the notice. Notice has to be unequivocal so as to leave no manner of doubt in the mind of the noticee that the claimant intends to invoke the arbitration clause. However, when the present notice is examined in the light of this settled position, it is evident that the petitioner never intended to invoke the arbitration clause. The sole objective of the notice was to recover the alleged losses as also to call upon the respondent to start using the LPG based furnace. There is a further stipulation in the notice that if it is not done within a fortnight from its service, petitioner would in future invoke the arbitration clause. However, nothing has been placed on record to show that after the expiry of said period, another notice was sent to the respondent under Section 21 of the Act.

12. The reliance placed by the counsel for the petitioner upon the judgments of the Delhi High Court in **Badri Singh Vinimay Private Limited Versus Mmtc Limited, 2020 (3) R.A.J. 81** and **De Lage Landen**

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Financial Services India Pvt. Versus Parhit Diagnostic Private Limited**and Ors., AIRONLINE 2021 DEL 1441** do not advance his case. In

Badri Singh Vinimay's case supra, the High Court of Delhi considered the language of the notice and came to the conclusion that a communication claiming disputed amount and on its failure contemplating arbitration, in the alternative, is a sufficient notice of a request for arbitration. In *De Lage Landen's* case supra, the High Court of Delhi, was of the view that on the basis of the notice issued, an Arbitrator was appointed and the respondents duly participated in the arbitration proceedings, therefore they could raise an objection that a proper notice had not been served under Section 21 of the Act. Both the cases are, therefore, distinguishable on facts.

13. For the foregoing reasons, this Court is of the view that as the petitioner has failed to invoke the arbitration clause by serving a notice under Section 21 of the Act, the instant petition under Section 11(6) for appointment of an arbitrator is not maintainable. Petition is dismissed. Liberty is, however, granted to the petitioner to serve a notice under the said provision, if permissible, in accordance with law.

14. Pending miscellaneous application(s), if any, stands disposed of.

(SUVIR SEHGAL)
JUDGE

08.02.2024

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Whether reasoned/speaking : Yes/No

Whether reportable : Yes/No